Commissioner's Release 3-F: When Does an Agreement Constitute a "Franchise"

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This release provides guidance based on interpretive opinions which may be of assistance in determining whether an agreement constitutes a "franchise," "area franchise" or "subfranchise" under Sections 31005(a), 31008, 31008.5 and 31010, respectively, of the Franchise Investment Law (Corporations Code Section 31000 et seq.) ("the Law"), the offer of which may be subject to the registration requirements of Section 31110, unless the transaction is exempted by Sections 31100 through 31104 (or by a rule of the Commissioner of Corporations), or unless excepted from the definition of a franchise under Section 31005(c). An offer of a franchise subject to registration under the Law or exempted from such registration by Section 31100 or 31101 of the Law, is excluded from the definition of "security" in Section 25019 of the Corporate Securities Law of 1968 (Corporations Code Section 25000 et seq.).

1. **FRANCHISE**
    1. **ELEMENTS:**
       Four elements are essential for an agreement to constitute a "franchise" within the definition of Section 31005, subdivision (a), of the Law:
        1. A right must be granted to the franchisee to engage in the business of offering, selling or distributing goods or services;
        2. The right must be granted to engage in the business under a marketing plan or system prescribed in substantial part by the franchisor;
        3. The operation of the franchisee's business must be substantially associated with an advertising or other commercial symbol designating the franchisor or an affiliate of the franchisor, such as a trademark, service mark, trade name or logotype; and
        4. The franchisee must be required to pay, directly or indirectly, a fee or charge,

known as a "franchise fee," for the right to enter into the business. However, the percentage of gross revenues of a business that is attributable to the "franchise" agreement may not be a factor in determining whether the agreement in question is a "franchise." (Comm. Op. No. 74/9F.)

2. **ANALYSIS OF EACH ELEMENT**
    1. **Franchisee Engaged in Business**
    For an agreement to be a "franchise," the franchisee must be granted the right to engage in the business of offering, selling, or distributing goods or services; but an agreement which grants the franchisee the right to engage in a business identified with the franchisor's commercial symbol is no less a franchise by reason of the fact that the franchisee previously, on his own and without reference to the franchisor's plan and symbol, had been engaged in the particular line of business. (Comm. Op. No. 72/29F.) Furthermore, the franchisee must be granted the right to offer, sell, or distribute goods or services to others rather than solely to the franchisor. (Comm. Op. Nos. 74/11F, 82/3F.) Also, the grant of the right by the franchisor to franchisees to solicit others to join in the franchise operation, or to solicit sales of other franchises, constitutes the right to engage in business. (PL/22F.)

    If the agreement does not grant the franchisee the right to engage in business, it is not a franchise. Thus, an agreement by which a person designated as "franchisee," for a fee which is designated as "franchise fee," is given the right to participate in the profits of a business, but who is given no right to operate or participate in the operation of the business, is not a franchise, but is a profit participation arrangement or investment contract which may be subject to the qualification requirements of the Corporate Securities Law of 1968. (Comm. Op. No. 72/27C.)

    2. **Marketing Plan or System**
    For the agreement to constitute a "franchise," the business in which the franchisee is granted the right to engage in must be operated under a marketing plan or system prescribed in substantial part by the franchisor.

        1. **No Marketing Plan**
        If no marketing plan or system is prescribed and the franchisee is left entirely free to operate the business according to the franchisee's own marketing plan or system, the agreement is not a franchise. Thus, a distribution agreement by which a manufacturer or wholesaler for a fee grants the right to a distributor or retailer to sell a trade-marked product purchased from the manufacturer or wholesaler is not a franchise if the distributor or retailer may sell the product according to its own plan without express or implied limitations on the method or mode of sale, but this is not the case where the agreement includes the soliciting of others to purchase further "franchises" which may itself constitute a marketing plan. (Comm. Op. No. 71/25F.)

        2. **Interpretation in Line with Objective of the Law**
        In making the determination whether there is a prescribed marketing

plan or system, it is necessary to keep in mind the objective of the Law to deal with a multiplicity of business arrangements created by the franchisor and presented to the public as a unit or marketing concept, and for all of which the franchisor ostensibly assumes responsibility by causing these arrangements to be operated with the appearance of some centralized management and uniform standards regarding the quality and price of the goods sold, services rendered, and other material incidents of the operation. The marketing plan or system prescribed by the franchisor is one of the important means by which the appearance of centralized management and uniform standards is achieved. (Comm. Op. No. 73/39F.)

3. **Significant Provisions**
   If the franchisor in his advertising to prospective franchisees claims to have available a successful marketing plan, the element of a marketing plan presumably will be present. In other cases, provisions contemplating a nation- or area-wide distribution grid on an exclusive or semi-exclusive basis, possibly with multiple levels of jurisdiction such as regional and local distributorships, and an arrangement designed to establish uniformity of prices and marketing terms are significant. Control reserved over terms of payment by customers, credit practices, warranties and representations in dealings between franchisees and their customers, suggest a uniform marketing plan. Provisions concerning collateral services, which may or may not be rendered, or prohibiting or limiting the sale of competitive or non-competitive goods are consistent with, though certainly not in and of themselves determinative of, a prescribed marketing plan. Significance attaches to provisions imposing a duty of observing the licensor's directions or obtaining the licensor's approval with respect to the selection of locations, the use of trade names, advertising, signs, sales pitches, and sources of supply, or concerning the appearance of the Licensee's business premises and the fixtures and equipment utilized therein, uniforms of employees, hours of operation, housekeeping, and similar decorations.

   The implementation of these and other similar directions by procedures for inspection by, and reporting to, the franchisor with respect to the conduct of the franchised business, and the right of the franchisor to take corrective measures, possibly at the expense of the franchisees, are indicative of the franchisor's control over the franchisees' operations and, consequently, of a marketing plan prescribed by the franchisor. A comprehensive advertising or other promotional program of the franchisor with or without an obligation on the part of the franchisees to bear part of the expense of such program, is indicative of a marketing plan prescribed by the franchisor, especially if the advertising or promotional material identifies the locations of the franchisees, and the more so if individual advertising or promotional activities by franchisees

are prohibited or require the prior approval of the franchisor. Furthermore, the ability of the franchisor to control the essential decision making process of a franchisee's business, such as through a majority ownership interest in the business or by appointing a majority of the members of a committee that is responsible for making important decisions relating to sales, marketing, merchandising, personnel, etc., is indicative of a marketing plan prescribed by the franchisor. (Comm. Op. Nos. 75/2F, 79/2F; OP 4736F.

4. **Prescribed "In Substantial Part"**
   Close questions of interpretation are presented by agreements which grant to a person the right to engage in business subject to some restrictions but with a measure of freedom regarding the plan or system under which the grantee's business is to be operated. Section 31005(a) provides that to be a franchise, the marketing plan or system must be prescribed by the franchisor "in substantial part." Whether the directions given to the franchisee in the agreement are "substantial" in this sense, is a question which necessarily must be determined, with respect to each agreement, based upon an evaluation of all provisions contained therein and the effect which these provisions have as a whole on the ability of the person engaged in the business to make decisions substantially without being subject to restrictions or having to obtain the consent or approval of other persons. This determination may be made in the light of applicable principles of general law and of customs prevailing in the particular trade or industry.

5. **Marketing Plan "Prescribed" by Implication**
   A marketing plan or system may be "prescribed" within the meaning of Section 31005(a), although there may be no obligation on the part of the franchisee to observe it, where a specific sales program is outlined, suggested, recommended, or otherwise originated by the franchisor. Thus, a sales program may be "prescribed" by the franchisor where the franchisor supplies the franchisee with sales aids or props, such as demonstration kits, films, or detailed instructions for personal introduction and presentation of the product, possibly including the text of a sales pitch and especially where such a program is supported by training material, courses, or seminars. (Comm. Op. No. 71/61F.) By such means, a non-mandatory program may attain the level of a "prescribed" program, particularly where there are negative covenants against the use of specified modes of distribution such as a prohibition of sales to retail stores.Therefore, a provision in the agreement that the franchisee is to be considered an independent contractor or that the franchisor is not concerned with the means employed by the franchisee to make sales or with the manner in which the business of the franchisee is conducted does not preclude the possibility that the franchisor's business is operated pursuant to a marketing plan or system prescribed in substantial part by the franchisor. be a franchise.

(Comm. Op. No. 73/40F.)

6. **Normal Routines No Marketing Plan**
   On the other hand, the requirement of a marketing plan or system prescribed in substantial part by the franchisor is not satisfied merely because an agreement imposes upon the operator of a business procedures or techniques which are customarily observed in business relationships in the particular trade or industry, even though, to some extent, they may restrict the freedom of action or the discretion of the operator. Thus, an obligation imposed on a distributor to use his best efforts to make or increase sales of the licensor's product is too general a requirement to amount to a marketing plan or system. Where a television station is Licensed to produce a copyrighted games show, there is no marketing plan or system merely because the station is required to follow the format of the show and use props provided by the licensor. (Comm. Op. No. 71/42F.)

   Where a restaurant is authorized to be conducted under a trade name without the imposition of any other marketing plan or system, a requirement that public liability insurance be maintained in a certain amount does not characterize the agreement as a franchise because such a requirement is not a substantial limitation and is normal and customary in an agreement where the licensor may be exposed to liability as a result of the Licensee's operation of the business. Likewise, where a manufacturer is Licensed by an inventor to make and sell a patented device subject to a royalty reserved by the inventor, or where a retail store is Licensed to distribute trade-marked articles subject to a royalty reserved by the manufacturer, it would be customary to require maintenance of records and accounts by the Licensee for verification of the royalty due under the agreement. Also, specifications to be observed by a Licensee in the manufacture of a patented device designed to protect the quality of the product are normal in such circumstances. These requirements in and of themselves do not amount to a marketing plan or system. (Comm. Op. Nos. 73/2F, 73/35F; but see, Comm. Op. No. 73/39F.)

7. **Some Examples**
   The Commissioner of Corporations' opinions have considered the presence of a marketing plan in light of the following provisions in an agreement:

   - Prescribing or limiting resale prices (Comm. Op. Nos. 72/11F, 73/5F, 73/47F; PL/27F);
   - Restrictions on use of advertising or mail order business (Comm. Op. No. 73/47F);
   - Requiring display racks (Comm. Op. No. 73/9F);
   - Giving detailed directions and advice concerning operating techniques (Comm. Op. Nos. 72/11F, 72/20F, 73/17F);

- Assigning exclusive territory (Comm. Op. Nos. 72/45F, 73/20F, 73/25F, 73/30F);
- Providing for uniformity or distinctiveness of appearance (Comm. Op. Nos. 72/10F, 72/21F, 73/26F, 73/27F, 73/29F);
- Limiting sale of competitive products (Comm. Op. Nos. 72/3F, 72/25F, 73/30F);
- Limiting use of products (Comm. Op. No. 74/6F); Requiring approval of advertising and signs (Comm. Op. Nos. 72/4F, 72/45F);
- Prohibiting engaging in other activities (Comm. Op. No. 75/6F);
- Providing training sessions (Comm. Op. Nos. 72/25F, 72/34F, 72/42F);
- Assigning contract (Comm. Op. No. 74/7F);
- Use of manual (Comm. Op. No. 72/42F);
- Providing "trade secrets" (Comm. Op. No. 74/8F).
- While any one of the examples of restrictions may not amount to "a marketing plan or system prescribed in substantial part by a franchisor," several such restrictions taken together may be sufficient to amount to such a plan or system.

3. **Substantial Association with Franchisor's Commercial Symbol**
   To constitute a franchise, the operation of the franchisee's business must be substantially associated with the franchisor's commercial symbol, such as a trademark, service mark, trade name, or logotype. An agreement is not a franchise, though it prescribes a detailed marketing plan or system for the operation of the business authorized thereby, if that business is not substantially associated with a commercial symbol of the franchisor or its affiliate.

   Again, the objective of the Law is to deal with a multiplicity of business arrangements presented to the public as a unit or marketing concept operated pursuant to a uniform marketing plan and under a common symbol. Therefore, if the franchisee is granted the right to use the franchisor's symbol, that part of the franchise definition is satisfied even if the franchisee is not obligated to display the symbol. (Comm. Op. No. 73/20F.)

   Moreover, in line with the objective of the Law, for the operation of the franchisee's business to be substantially associated with the symbol, it must be communicated to the customers of the franchisee. A commercial symbol which a supplier of goods or services only uses on its invoices or in its advertising to distributors, but which the supplier does not permit the distributors to show in dealing with their customers, is not in the eyes of the public substantially associated with the operation of the supplier. (Comm. Op. Nos. 71/16F, 73/18F.)

   However, where the trademark is communicated to the customers of the supplier, the appearance of a unified operation is established and it is immaterial whether the advertising containing the trademark is originated, distributed, or paid for by the supplier or by the distributor. In resolving the

question whether there is a substantial association between the Licensee's business and the licensor's commercial symbol, it is necessary to consider whether that commercial symbol is brought to the attention of the Licensee's customers to such an extent that the customers regard the Licensee's establishment as one in a chain identified with the licensor. (Comm. Op. Nos. 73/5F, 78/1F.) Thus, in one case, the shape devised by a franchisor for the franchisees' restaurants amounted to a commercial symbol. (PL/37F.) In another case, the various manufacturing plants with which the franchisor entered into service contracts with, and which were later assigned to the franchisees, were considered "customers" of the franchisees. Since the franchisor communicated its name to these customers as a result of negotiating the service contracts and by being a named party to the service contracts, it was concluded that the franchisees' businesses were substantially associated with the commercial symbol of the franchisor. (Comm. Op. No. 74/7F.)

4. **Franchise Fee**
   For the agreement to constitute a franchise, the agreement must call for the payment of a franchise fee by the franchisee.

   1. **Definition**
      Section 31011 of the Law contains a broad definition of "franchise fee." That section includes in the definition any fee or charge that a franchisee is required to pay or agrees to pay for the right to enter into a business under a franchise agreement. In accordance with this definition, any fee or charge which the franchisee is required to pay to the franchisor or an affiliate of the franchisor for the right to engage in business is a franchise fee regardless of the designation given to, or the form of, such payment.

      Whether or not a fee or charge is "required" and whether it is made "for the right to enter into a business," is a mixed question of fact and law.

   2. **Types of Franchise Fees**
      A franchise fee may be payable in a lump sum or in installments. The amount of the installment payments may be made to depend on gross receipts or net profits in the form of a royalty, or it may be charged on units of merchandise ordered or sold by the franchisee. Thus, the franchise fee may be contained in the price charged by the franchisor or an affiliate of the franchisor for goods or services supplied to the franchisee or in the rental fee payable by the franchisee for business premises or equipment rented from the franchisor or an affiliate of the franchisor.

   3. **Bona Fide Wholesale Price of Goods**
      Under Section 31011, there is an exception from the definition of franchise fee for a payment on account of the purchase of goods in an amount not exceeding the bona fide wholesale price of such goods. This exception is based on the rationale that no substantial prejudice

will come to a person buying a business and paying only the bona fide wholesale price for merchandise which that person proposes to sell in the business. Under these circumstances, such a payment is not deemed to be made for the right to enter into the franchised business. (Comm. Op. No. 73/20F.)

In line with this rationale, "bona fide wholesale price" means the price at which goods are purchased and sold by a manufacturer or wholesaler to a wholesaler or dealer where there is ultimately an open and public market in which sales of the goods are effected to consumers of the goods. "Bona fide wholesale price" does not include the price of goods for which there is no such open and public market, and where the goods are sold primarily to a person engaged in their redistribution. (PL/20F; Comm. Op. Nos. 71/52F, 73/1F, 74/2F.)

4. **Goods**

The bona fide wholesale price exception is applicable only to the purchase of goods which the franchisee is authorized to distribute by the franchise agreement and the exception does not apply to payments which the franchisee is required to make under the franchise agreement in return for benefits other than goods, such as payment for real estate or services or rental payments. Furthermore, the exception is not applicable to fixtures, equipment or other articles which are to be utilized in the operation of the franchised business, such as display cases, tools, equipment, and, in the case of a restaurant franchise, such items as table linen, napkins, flatware and other service utensils. However, Commissioner's Rule 310.011.1 (10 C.C.R. Sec. 310.011.1) exempts from the registration requirement of Section 31110 the offer or sale of a franchise which is subject to registration solely because the agreement obligates the franchisee to pay a sum of not exceeding $1,000 annually on account of the purchase price or rental of fixtures, equipment or other tangible property to be utilized in, and necessary for, the operation of the franchised business, if the price or rental fee so charged does not exceed the cost which would be incurred by the franchisee acquiring the item or items from other persons in the open market. (Comm. Op. No. 74/6F.)

Moreover, Commissioner's Rule 310.011 (10 C.C.R. Sec. 310.011) exempts from the registration requirements of Section 31110 the offer or sale of a franchise which is subject to registration solely because the franchisee is required, directly or indirectly, to make a payment, no matter for what purpose, as long as on an annual basis the payment does not exceed $100. This exemption is additional to the exemption contained in Rule 310.011.1.

Under Section 31011, the exception with respect to "goods" does not include an idea or program, whether or not the idea or program is offered or distributed by word of mouth through instructions or lectures,

in the form of written or printed material or by a combination of both. Rather, the communication of such an idea or program is in the nature of a service to which the exemptions under Section 31011 and Rule 310.011.1 are not applicable. (PL/17F.)

5. **Quantity of Goods**
   Under Section 31011, the bona fide wholesale price exception is further limited to apply only if no obligation is imposed upon the purchaser to purchase or pay for a quantity of such goods in excess of that which a reasonable business person normally would purchase by way of a starting inventory or supply, or to maintain a going inventory or supply. Since a payment for such purchases is made by the franchisee not because the franchisee has a need for the goods, it is reasonable to conclude that the purchases are only to secure the right of selling the goods under the franchise agreement, and for that reason the payment constitutes a franchise fee. (Comm. Op. Nos. 73/1F, 73/10F.)

6. **Question of Fact**
   Whether the price which the franchisee under the agreement is required to pay for goods exceeds their bona fide wholesale price (or exceeds it by an amount in excess of that allowed by Rules 310.011 and 310.011.1) is a question of fact. Also a question of fact is, whether the quantity of goods the franchisee is required to purchase or pay for exceeds what a reasonable business person normally would purchase as a starting inventory or supply, or to maintain a going inventory or supply. The Commissioner will not resolve these questions in an interpretive opinion since such opinions are limited to the interpretation and determination of legal questions arising under the Law. (See, Commissioner's Release No. 61-C.)

   However, there are some legal considerations applicable to the determination of the bona fide wholesale price as follows:

   1. The bona fide wholesale price of goods which are sold under a trademark or other commercial symbol may vary depending on the degree to which such trademark or symbol has attained public acceptance. The price charged for trade-marked articles does not necessarily exceed their bona fide wholesale price when non-trade-marked articles of equal or comparable quality are wholesaled at a lower price because products with little or no market identification usually have a lower bona fide wholesale price than items, though of comparable quality, which have a marketing history and a ready identity in the market place. Therefore, if, as a matter of fact, at the time of the franchise agreement the trade-marked articles command a premium price in the market place by virtue of the trademark, the premium is not necessarily a franchise fee. (Comm. Op. No. 71/2F.) However, sales to distributors who are all within the common enterprise or

marketing system is not sufficient to substantiate the ultimate marketability and market identification of the product and, consequently, do not serve to support the bona fide wholesale price of the product being sold. (Comm. Op. No. 73/1F.)

2. The bona fide wholesale price of goods may vary at different levels of the distribution system or depend on the quantity of goods sold. Thus, a variance in the price paid by franchisees selling goods at different levels of distribution, such as jobbers selling to wholesalers and wholesalers selling to retailers, does not necessarily lead to the conclusion that the higher price paid by franchisees on the lower level constitutes a franchise fee. In a layered system of distribution, the price paid by a person engaged in distribution of the goods on one level may be a bona fide wholesale price, though it may be at variance with the bona fide wholesale price paid for the same goods by a distributor on another level. (Comm. Op. Nos. 71/53F, 73/41F.)
3. The fact the price of goods is negotiable may defeat a claim of the bona fide wholesale price exception. When the sales price is negotiable, the sellers are unable to contend that sales are being made at the bona fide wholesale price since sales prices will vary according to the ability of the purchaser to negotiate. (Comm. Op. No. 74/10F.)
4. Under Section 31153 of the Law, the franchisor has the burden of proving that the price at which goods are sold to the franchisee does not exceed the bona fide wholesale price of such goods. Similarly, the franchisor must prove the facts to support any other exemption, such as those under Rules 310.011 and 310.011.1.

7. **"Required" to Pay**
   The Law does not include in the definition of "franchise fee" payments which the franchisee is not required to make but which are optional and required only if the franchisee elects to purchase, lease or rent merchandise, equipment or other property from the franchisor or an affiliate of the franchisor. In the absence of an obligation or a condition in the franchise agreement compelling action on the franchisee's part, or the necessity for undertaking such obligation in order to successfully operate the business, voluntary payments are not "required" under the agreement and, therefore, are not included within the statutory definition of "franchise fee." Also, voluntary payments, presumably, are not made for the right to enter into a franchised business and for that reason do not come within the definition.However, while a truly optional payment is not a franchise fee, a payment by a franchisee, though nominally optional, may in reality be essential; this is especially so if the franchisor intimates or suggests that the payment is essential for the successful operation of the business.

8. **Payments to Franchisor or Others**
   Payments which the franchisee is required to make under the franchise

agreement for the account of the franchisor are equivalent to payments made to the franchisor. Thus, it makes no difference whether payments for the rental of premises are required to be made by the franchisee to the franchisor as the owner and lessor of the premises, or to a third-party owner where the franchisor is the lessee and the franchisee the sublessee.

Also, payments required in the franchise agreement to be made by the franchisee for advertising and promotion to enhance the good will of the franchisor's business, even though the advertising and promotion also benefit the franchisee's business, may be deemed made for the account of the franchisor, especially where the agreement gives the franchisor discretion to determine the manner and content of the publicity. (PL/38F, PL/43F.)A payment to, or for the account of, third parties not affiliated with the franchisor is not a "franchise fee" within the meaning of Section 31011, even though the franchisee is required by the agreement to make such payment and even if the franchisor collects it from the franchisee on behalf of the third party; provided that such payment is not made for the right to enter into the business. However, under Section 31101(c)(1)(G) of the Law, if the agreement is a franchise as a result of other payments required of the franchisee amounting to a franchise fee, the obligation to make payments to the franchisor, in whole or in part, on behalf of third parties must be disclosed in writing by the franchisor.

9. **Some Examples**
   The Commissioner's opinions have considered the following types of payments as constituting a "franchise fee":

   - Performance guarantee or deposit (Comm. Op. Nos. 72/25F, 73/10F, 75/6F);
   - Deposit of money (Comm. Op. Nos. 73/15F, 74/3F, 74/5F, 74/6F);
   - An initial or set-up fee (Comm. Op. Nos. 72/23F, 73/15F);
   - Fee for advertising (Comm. Op. Nos. 72/11F, 73/17F);
   - Nonrefundable bookkeeping charge (Comm. Op. No. 72/13F);
   - A payment for training and school expenses (Comm. Op. Nos. 71/60F, 73/39F);
   - Royalty or percentage of gross receipts (Comm. Op. Nos. 72/47F, 73/23F, 73/24F);
   - Charges for sales kits, brochures, programs, forms, decals, shirts, displays and announcements (Comm. Op. Nos. 71/49F, 73/29F, 82/1F);
   - Rental or lease fee (Comm. Op. Nos. 73/26F, 73/50F);
   - Payment for services, such as consulting or management fees (Comm. Op. Nos. 73/25F, 73/41F, 77/1F, 79/2F).

2. **SUBFRANCHISE**

According to Section 31010 of the Law, "franchise," unless otherwise stated, includes a "subfranchise." "Subfranchise" is defined in Section 31008.5 to mean an agreement by which a franchisor for a consideration grants to a subfranchisor the right to sell or negotiate the sale of franchises in the name or on behalf of the franchisor. Section 31009 of the Law defines a "subfranchisor" as a person to whom a subfranchise is granted.

Therefore, when an agreement with a distributor constitutes a franchise, the distributor's agreement granting to a sub-distributor the right to appoint lower level sub-distributors for a consideration is a subfranchise, which is also subject to the registration requirement of Section 31110. (Comm. Op. Nos. 73/1F, 73/39F.) Thus, the same agreement may constitute both a franchise and a subfranchise, which means that a person may be both a franchisee and a subfranchisor under the same agreement. (Comm. Op. No. 92/1F.) However, the definition of subfranchise does not require the subfranchisor to also be a franchisee and the agreement constituting a subfranchise may be a totally separate and independent agreement.

"Consideration" for purposes of a subfranchise is not limited to the payment of a fee, as it is under the definition of franchise in Section 31005(a) of the Law. Instead, "consideration" is construed to mean any payment or other legal consideration. Accordingly, an expenditure required on account for sales and technical assistance, or training and supervision, constitutes "consideration" for purposes of the statutory definition. (Comm. Op. No. 92/2F.)

(It should be noted that the Law was amended in 1988 to transfer the definition of "area franchise" to "subfranchise" and to give "area franchise" a new definition.)

3. **AREA FRANCHISE**
   According to Section 31010 of the Law, "franchise," unless otherwise stated, includes an "area franchise." "Area franchise" is defined in Section 31008 of the Law to mean any franchise between a franchisor and a franchisee whereby the franchisee is granted the right to operate more than one unit within a specified geographical area.

4. **CONCLUSION**
   This release provides some insight into the complexity one faces when attempting to answer the question of whether an agreement involves an offer or sale of a franchise. The practitioner should review the opinions and, when the question is unclear, either request an interpretive opinion under Section 31510 of the Law (and pursuant to the requirements of Commissioner's Release No. 61-C) or file an application for registration of an offer of a franchise pursuant to Section 31110 of the Law.

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